UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,451	05/02/2005	Joachim Johansson	1505-1019-1	4136

466 7590 01/02/2009

YOUNG & THOMPSON
209 Madison Street
Suite 500
ALEXANDRIA, VA 22314

EXAMINER	
GOEL, DINESH K	
ART UNIT	PAPER NUMBER
2419	

MAIL DATE	DELIVERY MODE
01/02/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,451	JOHANSSON ET AL.	
	Examiner	Art Unit	
	DINESH GOEL	2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 September 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19,20,23-30 and 33-37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19,20,23-30 and 33-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 9/10/2008 have been fully considered but they are not persuasive.

On page 8, the applicants argue that Nag does not discuss allocating aggregated resources by reserving them in advance, and once a resource has been allocated, it is not further adjusted. Examiner disagrees. Nag et al teach pre-allocation (advance reservation) of resources which are further adjusted as needed (Column 3 line 58-Column 4 Line 7).

On page 10, the applicants argue that a limitation in claim 1, “allocating (802) network resources individually for said requested network resource reservation if applicable usage history statistics is not available” is not addressed in the rejection. Examiner disagrees. The examiner reads the limitation as "if the available usage history does not apply (for any reason), allocating network resources individually for said requested network resource reservation”. Nag et al teach dynamic adjustment in the pre-allocation (which was based on history) if it does not apply to the actual requirement (Column 4 Lines 3-6). Nag et al further teach continuation of the application session establishment process providing a best effort service for the request without the use of pre-allocated resources (Column 10 Lines 60-63).

On page 11, the applicants argue that although Nag et al discuss using historical data for network bandwidth, they do not discuss or imply that it is for a particular destination. Examiner disagrees (see Nag Column 2 Lines 28-39).

2. In response to applicant's argument that the references fail to show certain features of applicant's invention (page 12), it is noted that the features upon which applicant relies (i.e., "the time interval is equal for all destinations or different based on the historical statistics") are not exactly recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 101

1. The 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

> Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

> When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and Warmerdam, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).
>
> In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claim 27 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim **27** defines a computer program embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer- readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed **computer** program can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claims 19-20, 23-30, and 33-37** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nag et al (U.S. Patent No. 7013338) and further in view of Patel (U.S Patent No. 6850764).

Referring to claim 19, and corresponding claims 29 and 37, Nag et al teach method for allocating network resources within an IP network comprising the step of allocating at a first resource manager (Column 6 Line 43-60) reserved network resources controlled by at least a second resource manager (Column 6 Line 43-60) in advance before a session, that will use said resources, has started based on usage history statistics if available usage history statistics is applicable to said network resource reservation request (pre-allocated reservation). These concepts are described in Column 3 Line 58-67, Column 4 Line 1-30, Column 5 Line 49-56, Column 6 Line 43-60, Column 9 Line 9-32, and Column 10 Line 19-27.

The step of allocating network resources individually (an application session) for said requested network resource reservation if applicable usage history statistics is not available is further taught by Nag et al using media aggregation manager (Column 10 Line 28-63).

Nag et al further teach wherein said individually allocated network resources is allocated per reservation occasion (Column 10 Line 50-63).

They also teach wherein said allocated reserved network resources is allocated

based on usage history statistics per destination (Column 3 Line 58-67, Column 4 line 1-30).

Nag et al does not specifically teach updating said usage history statistics based upon said individually allocated network resources. This is taught by Patel (Column 8, Line 6-18).

At the time of invention, it would have been obvious to one of ordinary skill in the art to combine the teachings of Patel with the teachings of Nag et al. The motivation would be to keep updating the usage history statistics for the new requests which would be available for pre-allocation of resources next time. That would allow more efficient process of allocating resources as taught by Nag et al (Column 1 Line 34-56).

Referring to claim 20 and corresponding device claim 30, Nag et al further teach wherein the method comprises the further step of manual adjusting usage history statistics (Column 4 Line 3-7).

Referring to claim 23 and corresponding device claim 33, Nag et al further teach a method wherein the time interval between each occasion, which network resources are allocated based on usage history statistics, may either be equal for all destinations or differ between the destinations (Column 3 Line 58-67, Column 4 Line 1-3 would include variety of conditions).

Referring to claim 24 and corresponding device claim 34, Nag et al further teach a method wherein said allocation of reserved network resources is further based on statistics for individual services (Column 3 Line 58-67, Column 4 Line 1-30).

Referring to claim 25 and corresponding device claim 35, Nag et al further teach a method wherein the usage history statistics comprises any of the parameters a peak value, an average value or a variance (Column 1 Line 60-64).

Referring to claim 26 and corresponding device claim 36, Nag et al further teach a method wherein said first and/or second resource manager is implemented within a server or a router in said IP network (Column 2 Line 45-57).

Referring to claim 27, Nag et al further teach a computer program product directly loadable into a server and/or router within an IP network comprising the software code portions for performing the steps of claim 19 (Column 2 Line 45-57).

Referring to claim 28, Nag et al further teach a computer program product stored on a computer usable medium, comprising readable program for causing a processing means within a server and/or router within an IP network to control the execution of the steps of claim 19 (Column 2 Line 45-57).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DINESH GOEL whose telephone number is (571)270-5201. The examiner can normally be reached on Monday-Friday 8:00 AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Ryman can be reached on 571-272-3152. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dinesh Goel/
Examiner, Art Unit 2419

/Daniel J. Ryman/
Supervisory Patent Examiner, Art Unit 2419